



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

December 24, 2009

The Honorable Sue Myrick
U.S. House of Representatives
230 Cannon House Office Building
Washington, D.C. 20515

Dear Congresswoman Myrick:

Thank you for your letter regarding the Higher Education Opportunity Act of 2008, which requires colleges and universities to immediately notify their campus communities upon confirmation of a significant emergency. I appreciate learning of your concerns that the rules under the Controlling the Assault of Non-Solicited Pornography and Marketing (CAN-SPAM) Act may interfere with the ability of colleges and universities to comply with this requirement and ensure the safety of students, faculty and staff in an emergency situation. I am pleased to report as explained below, neither the CAN-SPAM Act nor the Telephone Consumer Protection Act (TCPA) prohibit noncommercial messages sent for emergency purposes only.

In your letter, you explain that colleges and universities may choose to use short message service (SMS) messaging as a component of their emergency notification process. You also note that University of North Carolina (UNC) campuses (and most colleges and universities) allow their students, faculty and staff to voluntarily opt-in to receive emergency text messages on their cell phones. Campuses then contract with third party SMS aggregators which are responsible for delivering the emergency text messages to individual cell phones. While SMS aggregators have multiple clients which originate a variety of text messages for both commercial and noncommercial purposes, the messages originating from UNC campuses are for emergency communications only. You explain that, apart from the campus-wide enrollment process, the SMS aggregators often require individuals to enroll *specific devices* for the emergency notification system based on their interpretation of the CAN-SPAM Act. The result is that almost 50 percent of individuals who initially opted in through the university registration program ignore the messages from aggregators to confirm their enrollment for specific devices and are potentially dropped from the notification system altogether. You state that this could unnecessarily place members of campus communities in dangerous situations.

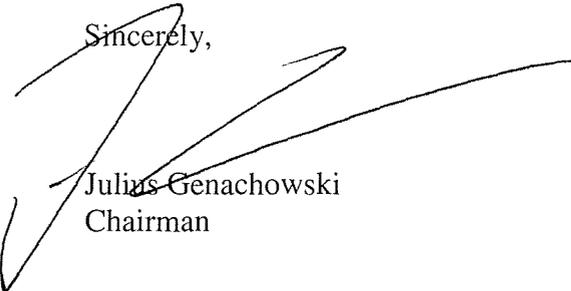
As you are aware, the CAN-SPAM Act prohibits the sending of unwanted commercial e-mail messages to wireless devices without the consumer's express prior authorization. The ban covers messages sent to wireless devices, if the message uses an Internet address that includes an Internet domain name. The CAN-SPAM Act defines commercial messages as those for which the primary purpose is to advertise or promote a commercial product or service. The rules do not apply to noncommercial messages. Therefore, messages designed for the sole purpose of communicating vital public safety information in an emergency would not be subject to the CAN-SPAM rules.

The CAN-SPAM Act supplements consumer protections put into place by the TCPA. In particular, the TCPA prohibits “any call (other than a call made for emergency purposes or made with the prior express consent of the called party) using any automatic telephone dialing system or an artificial or prerecorded voice. . .to any telephone number assigned to a paging service, cellular telephone service, specialized mobile radio service, or other radio common carrier service, or any service for which the called party is charged for the call.” 47 U.S.C section 227(b)(1)(A)(iii). The Commission has concluded that this statutory restriction encompasses both voice calls and text calls to wireless numbers including, for example, SMS calls, provided that the call is made to a *telephone number* assigned to such service. While the TCPA provision does not distinguish between commercial and noncommercial calls, it expressly excludes calls “made for emergency purposes.” Thus, the text messages you describe would not appear to violate the TCPA rules.

If you would like to discuss further how the CAN-SPAM and TCPA rules apply to the types of messages universities would like to send to their communities or the process for requesting a declaratory ruling from the Commission, please feel free to call Erica McMahon, Chief of the Consumer Policy Division in the Consumer & Governmental Affairs Bureau at 202-418-0346.

I share your concerns for ensuring safety on college and university campuses across our nation and hope this information is helpful. Please do not hesitate to contact me if you have further questions.

Sincerely,



Julius Genachowski
Chairman